

REMARKS

The Official Action dated September 24, 2004, has been carefully considered. Accordingly, the changes presented herein, taken with the following remarks, are believed sufficient to place the present application in condition for allowance. Reconsideration is respectfully requested.

By present amendment, new claims 39 to 44 have been added. Support for claims 39-43 is found in paragraphs 00020-00023 of the specification. Support for claim 44 is found in paragraph 00022. Care has been taken to avoid the introduction of new matter, whereby entry is believed to be in order and is respectfully requested.

The Examiner objected to the misspelling of "aperture" as "arpeture" and "apertures" as "arpetures" in claims 30 and 31. By present amendment, claims 30 and 31 have been amended accordingly. The objection is traversed and reconsideration is respectfully requested.

Also by present amendment, claim 28 has been amended to incorporate elements of claims 29 and 30, and to specify that the plurality of apertures, whereby fluid from the fluid source is ejected onto the cornea, are located on the leading side of the sidewall. Support for this amendment is found in original claims 29 and 30, paragraphs 00020 and 00022-00023 of the specification, and Figs. 7-13. Claim 33 has been amended to conform with the nomenclature used. Care has been taken to avoid the introduction of new matter, whereby entry is believed to be in order and is respectfully requested.

By present amendment, claims 29 and 30 have been amended to remove the elements that were amended into claim 28, and to specify that the cross-sectional shape of the spatula-like member can take various forms. Support for these amendments is found in original claims 12, 20, and 28, paragraphs 00021-00023 of the specification, and Figs. 8, 11 and 13.

Care has been taken to avoid the introduction of new matter, whereby entry is believed to be in order and is respectfully requested.

The Examiner rejected claim 32 under 35 U.S.C. 112, second paragraph, for being indefinite with regard to a reference to a syringe. By present amendment, claim 32 has been amended to specify that the syringe is the fluid source recited in claim 28. Accordingly, the rejection is traversed and reconsideration is respectfully requested.

In the Official Action, the Examiner rejected claims 28-35 under 35 U.S.C. 103(a) as being unpatentable over Yaacobi, et al. (U.S. Pat. No. 6,413,245) in view of Doshi, et al. (U.S. Pat. No. 6,443,944). The Examiner asserted that Yaacobi disclosed a handle and spatula-like member, including an arcuate distal section. The Examiner further asserted that while Yaacobi disclosed the spatula-like member having a circular cross-sectional shape, Doshi teaches that the tubular member of a surgical instrument may have a trapezoidal rather than a circular cross-sectional shape. The Examiner then asserted that it would have been obvious to make the cross-sectional shape of the Yaacobi instrument trapezoidal rather than circular since each shape would work equally well.

The rejection is traversed. By present amendment, claim 28 has been amended to recite a plurality of apertures whereby fluid from the fluid source is ejected onto the cornea, where said apertures are located on the leading side of the sidewall. Yaacobi teaches an instrument for the deposition of drugs on the sclera below Tenon's capsule in the posterior segment of the eye, where the orifice for drug delivery is located at the end of the tip of the distal portion of the instrument, Fig. 3A, or one or more orifices are located on the top and bottom of the distal portion, Figs. 3B, 3C. Applicant finds no suggestion in Yaacobi of a plurality of apertures on the side of the distal portion of an instrument for the ejection of a fluid onto the cornea as recited in claim 28. Claim 28 has further been amended to remove

the reference to a trapezoidal cross-sectional shape. Accordingly, the rejection with regard to claim 28 is traversed and reconsideration is respectfully requested.

The invention of the present application can further be distinguished from the instrument disclosed in Yaacobi in a number of ways. The instrument disclosed in Yaacobi is designed to deposit drugs behind the eye, which requires insertion of the distal end of his instrument in around the posterior segment of the human eye, and accordingly has a radius of curvature substantially equal to the radius of curvature of a globe of a human eye. In contrast, the present invention ejects a fluid to mechanically separate two tissues on the outer wall of the eye: the surgeon and the device are both located wholly outside the globe of the eye during use. Additionally, the radius of curvature of the arcuate section of the present invention is required to be substantially smaller than the radius of curvature of a globe of a human eye, as it is designed for work with the cornea. Further, the diameter of the apertures of the present invention are substantially smaller than the diameter of the orifices of the device disclosed in Yaacobi, this difference in size resulting from their different functions. In sum, Applicant finds no suggestion that the instrument of Yaacobi could be used to accomplish corneal reformation, which is the task for which the present invention is designed.

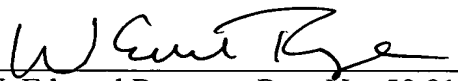
Similarly, Doshi teaches a device for manipulating large objects deep within the body cavity, where the surgeon is located outside the body while the instrument is inserted into the body. As noted above, the present invention is designed to be used while both the surgeon and the instrument are located outside the body. Further, the tube of Doshi is used to contain the mechanism by which the manipulating arms are controlled inside the body. Applicant finds no suggestion to use the instrument of Doshi to deliver a fluid through the tube, as recited in claim 28 of the present application. In addition, the trapezoidal form of the present invention is adapted to separate two tissues, while Applicant finds no suggestion to use the

tube of Doshi to separate tissues or tissue layers. Accordingly, it would not be obvious to combine Doshi with Yaacobi to create the instrument of the present invention.

The Examiner's rejection of claims 29-35 based on Yaacobi in view of Doshi also are traversed, in light of the present amendment to claim 28. As claim 28 as amended is now in allowable form, claims 29-35 are now allowable. Accordingly, the rejection with regard to claims 29-35 is traversed and reconsideration is respectfully requested.

Accordingly, the rejections of claims 28-35 have been traversed, and reconsideration is respectfully requested. It is believed that the above represents a complete response to the rejections under 35 U.S.C. 103(a), and places the present application in condition for allowance. Reconsideration and an early allowance are requested.

Respectfully submitted,


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